

Congress of the United States
Washington, DC 20515

August 1, 2005

The Honorable Alberto Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We write to request that the U.S. Department of Justice immediately appoint an outside special counsel to assume the Department's investigation into alleged illegal contributions by Mr. Thomas Noe to federal and state political campaigns. In light of recent disclosures that Governor Taft's office, which is a subject of the investigation, made a direct political appeal to Karl Rove for Gregory White, the U.S. Attorney for the Northern District of Ohio to receive his job, there is little doubt that this is a textbook case for the appointment of a special counsel.

We understand and appreciate that it is not unusual for local and state politicians to use their influence to obtain presidential appointments for their friends and political allies; however, it is unusual, and indeed inappropriate and violative of your regulations, for prosecutors who obtain such appointments to review the conduct of those same individuals and their friends. Regardless of the actual or perceived sincerity or motives of any particular prosecutor, to ask an individual who owes his job to certain politicians to pursue legal actions against those same politicians places the prosecutor in an untenable situation. Whatever actions he or she takes will inevitably be subject to questions of favoritism and bias, calling the entire prosecution into question. This is why the special counsel regulations were promulgated to begin with.

At the outset, we should note that Mr. Noe, who chaired the 2004 Bush-Cheney Campaign for northwest Ohio and managed the State of Ohio's Bureau of Workers Compensation Fund, appears to have been involved in the diversion of millions of dollars from the Fund to unsecured investments in coins and other collectibles.¹ Over \$12 million in coins purportedly owned by the State of Ohio, and perhaps other collectibles, are missing, including two coins valued at \$300,000.² Further, the State of Ohio now has claimed losses of \$215 million dollars as a result of unsecured hedge fund transactions involving MDL Enterprises of

¹P.J. Huffstutter, *Paying a Price over 'Coingate,'* L.A. TIMES, June 12, 2005, at A41.

²*Id.*

Pittsburgh, Pennsylvania.³ It appears very likely that political contributions to both federal and state officeholders and candidates were channeled from these state funds.⁴ Mr. Noe himself was a Bush Pioneer who raise over \$100,000 for the Bush campaign.⁵ Many political officials have recognized the impropriety of these contributions and thus have returned them, including Ohio Governor Bob Taft and California Governor Arnold Schwarzenegger.⁶

As you are no doubt aware, under the Department's regulations, you are required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."⁷ There is little doubt that all three factors are met in the Noe case.

In this situation, a criminal investigation is clearly warranted and, as a matter of fact, the Department has initiated one. A grand jury has been seated in the Northern District of Ohio and has been deposing dozens of individuals who may have been involved in these illegal activities. Moreover, the Federal Bureau of Investigation has been seizing computers, files, and assets of some of the individuals involved.

Second, there are myriad conflicts of interest for Department prosecutors to continue the investigation on their own. To begin with, the United States Attorneys investigating the case, those for the Northern and Southern Districts for Ohio, both of whom were appointed by President Bush, would be in the untenable position of investigating a leading official of the 2004 Bush-Cheney campaign. We now know that Mr. White has very close connections with the Governor's office and the White House. In fact, recently released records show that Mr. White sought Governor Taft's help in obtaining the U.S. Attorney position.⁸ The Governor's Chief of Staff, Brian Hicks, apparently communicated with Karl Rove, then a counselor to the President,

³*Id.*

⁴See Mark Niquette, *Noe Stole from State All Along, Petro Says*, COLUMBUS DISPATCH, July 22, 2005, at 1A.

⁵P.J. Huffstutter, *supra* note 1.

⁶P.J. Huffstutter, *supra* note 1.

⁷28 C.F.R. § 600.1 (2002).

⁸Mike Wilkinson & Steve Eder, *White Touted Bush Ties to Help Get Federal Post*, TOLEDO BLADE, July 29, 2005.

August 1, 2005

about Mr. White's interest in the post.⁹ In an e-mail to Mr. Hicks, Mr. White wrote, "I believe that my record speaks for itself, and I doubt there are too many county chairs for the Bush campaign that worked harder."¹⁰ This is the same Brian Hicks who was convicted along with his executive assistant, Cherie Carroll for accepting gifts from Mr. Noe in violation of state law (both are now lobbyists).¹¹ In assessing this prong of the regulations, the test for appointment of a special counsel does not rest on the prosecutor in question's perceived reputation or the characterization of his reputation by others, regardless of their political stripe; it is based on whether the conflict of interest exists at all, which is clearly the case in the present instance.

In addition, on October 1, 2004, one month before the election, the Bush administration appointed Mr. Noe as Chair of the U.S. Mint's Citizens Coinage Advisory Committee.¹² Federal legislation was passed for the specific purpose of allowing Mr. Noe's appointment.¹³ That legislation moved through the U.S. House Committee on Financial Services, before which Mr. Noe had testified¹⁴ and to whose Members Mr. Noe had contributed financially. Mr. Noe resigned the U.S. Mint position on May 26, 2005,¹⁵ after the circumstances of the appointment were publicized in the media.

Finally, the appointment of a special counsel for this matter would undoubtedly serve the public interest. The allegations of improper conduct reach to the highest-possible levels of federal and state government and pertain to a serious corruption of our democratic system of government. The appointment of a special counsel would demonstrate to the American public the Department's understanding of the importance of and need for impartiality in this case. Also, an investigation by a single special counsel would not be subject to any jurisdictional issues that

⁹*Id.*

¹⁰*Id.*

¹¹Christopher D. Kirpatrick, *Former Taft aides fined for Ethics Violations*, TOLEDO BLADE, July 29, 2005.

¹²See U.S. Mint, *New Chairperson and New Member of Citizens Coinage Advisory Committee Are Appointed* (Oct. 12, 2004) (press release).

¹³See American 5-Cent Coin Design Continuity Act of 2003, Pub. L. No. 108-15.

¹⁴*Money Matters: Coin and Counterfeiting Issues: Hearing before the Subcomm. on Domestic and Int'l Monetary Policy, Trade and Technology of the U.S. House Comm. on Financial Servs.*, 108th Cong., 2d Sess. (Apr. 28, 2004).

¹⁵U.S. Mint, *New Member of Citizens Coinage Advisory Committee Appointed; Member Noe Tenders Resignation* (May 31, 2005) (press release).

The Honorable Alberto Gonzales

Page 4

August 1, 2005

may be present under the current scenario of two prosecutors. There is little question that high-ranking political officials nationally and at the state level were knowledgeable and involved in these activities. Many questions must be addressed involving the link between alleged illegal campaign contributions, diversion of State funds, their relation to 2005 elections, as well as the federal appointment of Mr. Noe to a federal advisory committee.

As a matter of fact, the numerous delays in the investigation have already raised the specter of political favoritism. From documents that have been made public, we know that the U.S. Attorney for the Northern District of Ohio, Gregory White, who is leading the federal investigation, had prior knowledge of the losses before the 2004 presidential election, as did the Governor of Ohio and other officials.¹⁶ At the same time, no investigation was initiated on these matters until spring of this year.¹⁷

The fact pattern present in this case, particularly with the new disclosure that the lead federal prosecutor may well have gotten his job as a result of a political appeal by Governor Taft's office to Karl Rove, make it abundantly clear that a special counsel is necessitated. We urge you to make such a designation immediately to help restore public trust in this very important investigation.

We look forward to promptly hearing whether you will appoint a special counsel and, if not, the reason for your decision. Please reply through the House Judiciary Committee Minority Office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel 202-225-6504; fax: 202-225-4423).

Sincerely,



John Conyers, Jr.



Marcy Kaptur

¹⁶James Drew & Steve Eder, *Allegations Arose Before '04 Election*, TOLEDO BLADE, June 19, 2005, at A1.

¹⁷Mike Wilkinson & James Drew, *Noe Faces Federal Probe for Bush Contributions*, TOLEDO BLADE, Apr. 28, 2005, at A1.

The Honorable Alberto Gonzales

Page 5

August 1, 2005

cc: Hon. William E. Moschella
Assistant Attorney General

Hon. F. James Sensenbrenner, Jr.
Chairman, U.S. House Comm. on the Judiciary